Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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CASE AND COMMENT

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A Legal Tangle.

How an erroneous decision against a plaintiff, though an appeal therefrom be diligently prosecuted and a reversal obtained, can still remain, in effect, an effectual barrier against the relief to which he is justly entitled, might seem to be a mystery; yet such is the result of the recent decision of the United States Supreme Court, by vote of five to four, in the case of Deposit Bank of Frankfort *v.* Board of Councilmen. In this case suit was brought by the city of Frankfort, Kentucky, against the bank, in a circuit court of the state, for taxes. Judgment was rendered for the bank on the ground that it had a contract exemption from taxation. This judgment was reversed on appeal, and the case remanded. In the subsequent proceedings the bank filed a supplemental answer setting up as an estoppel a decree which, pending the appeal, had been rendered in a suit between the same parties relating to taxes of other years, by a Federal circuit court, and affirmed by the Federal Supreme Court by equal division, to the effect that this judgment of the state court, from which an appeal was then pending, was *res judicata* in the Federal suit. This defense, though held bad by the Kentucky court of appeals, has just been held good by a majority of the justices of the United States Supreme Court. The result is that the city, which brought the original suit for taxes in the state court, and, when defeated, duly prosecuted an appeal and secured a reversal of the decision, is, nevertheless, estopped by the indirect effect of the very decision which it has succeeded in reversing. No intimation is given that the city had been guilty of any laches or fault of any kind with respect to the case, and still it is denied relief because another court, pending the appeal from the erroneous judgment, followed that as *res judicata*. The gist of the matter seems to be, in the briefest form, as follows: If an erroneous judgment from which an appeal is pending is followed as *res judicata* in another suit between the same parties, this second decision will itself be *res judicata* on the second trial of the first action, and thus indirectly establish the erroneous decision of the lower court as the final law of the case in spite of the fact of its reversal. The absurdity of this result may not prove that the established rules of law do not compel the conclusion, but, if they do, it demonstrates that established rules of law may sometimes prevent a just judgment.

It is well established that a judgment, while unreversed, is none the less binding as *res judicata* because an appeal therefrom is pending. Therefore, it must be admitted that the circuit court of the United States was correct in following the decision of the lower state court as *res judicata* if the cause of action in the two cases was to be

deemed the same. On this point, however,—that is to say, on the question whether or not a decision as to the validity of taxes for one year can be *res judicata* in a suit for taxes of other years based on the same statute,—the rule of the Federal courts is contrary to that of nearly all the states; but, following the Federal rule, the decision of the Federal court was unquestionably correct in holding that the judgment of the state court was *res judicata*.

The effect of the decision of the Federal circuit court as *res judicata* when pleaded in the state court after its judgment has been reversed involves several questions. If that were not an independent judgment on the merits of the case, but based only on the binding effect of the earlier state court judgment, it seems absurd, after the foundation on which it rested has been removed by reversal, to make it controlling of the rights of the parties, even as against the decision of the highest state court, which had corrected the error it followed. It seems unreasonable to apply the doctrine of *res judicata* to elevate a mere appendage of an erroneous decision into an authority which will control the original case. But, if the decision of the Federal court is to be deemed a decision of the merits of the case, then it is not clear how its effect as *res judicata* can be avoided in the state court after the reversal of its first judgment. When the judgment of the state court was reversed, and the cause remanded, there was no longer any judgment in the state court, but the question was open, again, to determination by the trial court. Therefore, the decree of the Federal court was the only existing adjudication between the parties; and it is not easy to see why it must not be held to be controlling as *res judicata*, even of the earlier case in the state court. Of course, the fact that the case in the state court was first brought would not prevent a judgment of another court on the same subject-matter from being *res judicata* therein if that were the only judgment in force. The fact that there had previously been a judgment in the earlier case would not seem to change this result if that judgment were no longer in existence.

It is well worthy of notice that on this peculiar tangle of proceedings an equal number of judges in the state and Federal courts of last resort have been found on each side of the question. The Kentucky court of appeals decides by a majority of one the conclusiveness of the circuit court decree, and by a majority of one in the Supreme Court of the United States the contrary is held.

Trade Unionism in Fire Department.

The position taken by Mayor Harrison of Chicago, that firemen employed by the city cannot be members of a trade union, on the ground that such public employees cannot have a divided allegiance, rests on the soundest public policy. The right of private citizens engaged in private employments to form unions is one of the sacred rights of freedom so long as the unions are for a lawful purpose and are lawfully conducted, but the right of the public is paramount in determining what public employees may or may not do. As the mayor well says, if the firemen of a city belonged to a union they might be called out on a strike, and the city left to the mercy of conflagrations. Plain common sense is sufficient to show the limit of private rights of firemen in such particular. Every man has a right to join a union, but he has not a right to be, at the same time, a member of the fire department. The limitations on the private rights of those who are employed in public positions are too well established to leave any doubt on this point. A member of a jury may be deprived of his ordinary right to associate and converse with other men in order to prevent his being biased in the performance of his duty. Public officials may be prevented from taking a pass from a common carrier merely because they are public officials, though other citizens are allowed to take such passes. In a multitude of ways public policy limits the ordinary rights of men while engaged in public service, and few things seem more obviously just than to require the undivided allegiance of such public servants as firemen, on whose faithfulness depends the safety of property and human life.

Eight-Hour Law for State Work.

A late decision of the United States Supreme Court in the case of Atkin *v.* Kansas,

Advance Sheets U. S. p. 124, establishes the constitutionality of the Kansas law which makes it a criminal offense for a contractor for public work to permit or require an employee to labor thereon more than eight hours a day. Neither the constitutional guaranty of freedom to contract, nor the guaranty of the equal protection of the laws, is deemed to be violated by such a statute. This decision is very squarely opposed to that of the New York court of appeals in People *v.* Orange County Road Construction Company, which held a similar statute of the state of New York to be unconstitutional on the ground that the police power of the state does not extend to such interference with the employment of labor by independent contractors though they are engaged upon a public work. The opinion of the court of appeals, denying that the statute can be upheld as an exercise of the police power, declares that the question is settled by the decisions both of that court and of the Supreme Court of the United States. But the New York court was evidently mistaken in its interpretation of the Federal-court decisions, if they are consistent with the last case in that court. The fundamental difference between the positions taken by the two courts is in respect to the effect to be given to the fact that the work is done for the public.

The New York court concedes that, if the employees were working directly for the state, the state might regulate their hours and every other detail of their work, but denies that the state has any greater rights than a citizen would have to control the details of the work when it lets out the performance thereof to a contractor, except so far as it reserves such right by the contract. On the other hand, the Federal court proceeds on the theory that, as the work is done for the state, the state may prescribe the conditions on which it shall be done. The language of the court on this point is as follows: "We can imagine no possible ground to dispute the power of the state to declare that no one undertaking work for it, or for one of its municipal agencies, should permit or require an employee on such work to labor in excess of eight hours each day, and to inflict punishment upon those who are embraced by such regulations and yet disregard them. It cannot be deemed a part of the liberty of any contractor that he be allowed to do public work in any mode he may choose to adopt, without regard to the wishes of the state. On the contrary, it belongs to the state, as the guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities. No court has authority to review its action in that respect. Regulations on this subject suggest only considerations of public policy; and with such considerations the courts have no concern. If it be contended to be the right of everyone to dispose of his labor upon such terms as he deems best,—as, undoubtedly, it is,—and that to make it a criminal offense for a contractor for public work to permit or require his employee to perform labor upon that work in excess of eight hours each day is in derogation of the liberty both of employees and employer,—it is sufficient to answer that no employee is entitled, of absolute right and as a part of his liberty, to perform labor for the state; and no contractor for public work can excuse a violation of his agreement with the state by doing that which the statute under which he proceeds distinctly and lawfully forbids him to do."

It must be admitted that each of the two courts seems to assume, rather than to prove, the correctness of its fundamental proposition as to the effect of the public character of the work when done by an independent contractor to give the state power to prescribe the conditions of its performance. The New York court merely says, in respect to such labor on public works done by contract: "The state in this respect stands the same as its citizens. Its rights are just as great as those of private citizens, but no greater;" while the Federal court does little more than to declare that "it belongs to the state, as the guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities."

Each court discusses at length some other questions, but on this, which constitutes the rock upon which they split, each declares its position without seeming to think it necessary to do more.

The New York court admits that stipulations may be required of contractors on such

matters, but holds that the statute prescribing a penalty for requiring excessive hours of labor from employees cannot apply even to contractors who have stipulated to limit the hours of labor, because the statute, being invalid as to others, cannot be given a partial effect by enforcing it against them.

The effect of this conflict between the state and Federal courts is to leave it in the power of the highest court of a state to determine for itself whether or not it will sustain such a statute. If it does, the Federal court will not interfere, as it holds that the Federal Constitution is not violated by such statute. But if, on the other hand, the state court holds, as the New York court does, that such a statute is unconstitutional because it is not the proper exercise of the police power, there seems to be no way in which that decision can be reviewed or reversed by the Federal court. Even if such decision should rest upon a Federal question, the fact that it would be in favor of the Federal right claimed as against the state would preclude the Federal court from reviewing it.

The New York Employers' Liability Law.

What CASE AND COMMENT denominated a surprise in the employers' liability law last September, in criticising the decision made by the appellate division of the supreme court of New York in the first department in the case of Johnson v. Roach, 82 N. Y. Supp. 203, has been again under consideration and that case rejected as an authority by the appellate division of that court in the second department in the recent case of Rosin *v.* Lidgerwood Manufacturing Company. The former case held, in effect, that pre-existing remedies in actions by employees against employers for injuries caused by negligence were abolished by the New York employers' liability law of 1902, which limits to one year the time for bringing action under the statute, and also requires a notice of the time, place, and cause of the injury to be given as a condition precedent to the action. The latter case, like the former, was a case in which the complaint was dismissed upon the ground that it did not state facts sufficient to constitute a cause of action in that it did not allege the giving of the statutory notice. The court cites the case of Johnson *v.* Roach and others, and says: "The great respect which is due to a court of co-ordinate jurisdiction and powers demands that we should not lightly disregard its construction of the law. Yet the members of this court are oath-bound to discharge the duties of an appellate court, and we may not disregard our own convictions upon a question involving the rights of litigants in the discharge of those duties." The court, therefore, refused to follow the decision in the case of Johnson *v.* Roach, and held that, as the act purports "to extend and regulate the liability of employers to make compensation for personal injuries suffered by employees," the limitation upon such action, made by the statute, must relate only to the new liabilities imposed "under this act." The court says: "It may not be assumed that the legislature, in an act "to extend and regulate the liability of employers," intended to take away any of the rights or privileges secured to citizens of this state by the law of the land. (See § 1, art. 1, State Constitution.) The general rule is that an intention to change the rule of the common law will not be presumed from doubtful statutory provisions; the presumption is that no such change is intended, unless the statute is explicit and clear in that direction."

On the question of the constitutionality of the act suggested in CASE AND COMMENT, if the statute were to put restrictions upon employees that do not apply to other classes of persons in actions for negligence, two of the judges held that such a construction of the statute would make it unconstitutional, saying, after citing the guaranties of the Federal and state Constitutions: "These high purposes of the Federal Constitution, as well as those of our own, are defeated under the interpretation of the statute which requires persons with a common-law right of action to submit to conditions which are not required of others similarly situated; which makes a condition precedent for one citizen to maintain his rights which is not required of another whose cause of action is based upon the same wrongful or negligent conduct on the part of an individual or corporation." The other judges, however, express no opinion on this constitutional question.

The Massachusetts case of Veginan *v.* Morse, 160 Mass. 143, which was cited in Johnson *v.* Roach as authority for the neces-

sity of notice, was shown in CASE AND COMMENT to be an authority directly to the contrary. Concerning this the court in the Rosin Case points out that there were three counts in the declaration, two of them under the employers' liability law and the third under the common law, and that the Massachusetts court held that the lack of notice was fatal only to the statutory counts, and that it nowhere appears in the opinion of the court that there was any doubt as to the right of the plaintiff to maintain a common-law action, but that, on the contrary, the action was maintained on the common-law count.

The decision in this later New York case unquestionably gives effect to the real intention of the statute, and it seems clear that it is also consistent with sound rules of law. In the case of Johnson *v.* Roach there was no discussion of the fundamental question as to the effect of the statute to abolish common-law remedies without affirmative words, but that seems to have been assumed.

A Persistent Error.

Whenever any great calamity causing the death of a number of people occurs, there is an immediate discussion in the public press, and sometimes even by attorneys, as to the complications that may result in the settlement of estates, if several persons of the same family have perished in the disaster. This arises again as a result of the terrible Chicago theatre fire. The press is discussing the problems that will confront the courts in determining which of the various members of a family that were lost died first. Much of this discussion proceeds on the assumption that there are rules of presumption respecting persons of different sexes and ages. There has been a widespread misunderstanding on this subject, and the error still persists in the minds of a great many people, including some members of the legal profession who have not had occasion to make a special examination of the subject. This subject was very thoroughly examined, with a review of all the English and American authorities, in a note in 51 L. R. A. 863. The result of the investigation of all the authorities may be briefly and simply stated by saying that at common law, the rule of which is still in force in all the states of the Union except California and Louisiana, there is no presumption whatever upon the subject of survivorship if several persons perish in the same disaster. Neither age nor sex is sufficient to create any such presumption. The case is simply open to evidence, unaffected by any presumption. Therefore, whoever claims an inheritance or any other advantage based on the supposition that one of the persons survived the other must prove the fact. In the absence of any proof he must fail. In effect it is almost invariably the same as if there were a presumption that both persons died at the same moment. In reality there is not such a presumption, but the result to one who bases any claim upon the survivorship of one or the other of the parties is the same as if the law made a presumption that both died at the same instant. With the law on this point clearly in mind, the difficulties of the subject mostly disappear, unless there is some affirmative evidence to show that one of the persons survived the other.

Index to New Notes IN LAWYERS' REPORTS, ANNOTATED.

Book 61, Parts 5 and 6.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

Bills and Notes.

To whom should notice of protest or non-payment be given after appointment of receiver, assignee, or other representative of insolvent:—(I.) Introduction; (II.) absence of notice, either to insolvent, or to his representative; (III.) notice to assignee, or other representative of insolvent; (IV.) notice to insolvent maker, indorser, or accommodation payee 900

Canals.

Construction and operation of canals:—(I.) As public improvement; (II.) acquisition of rights: (a) what may be acquired; (b) what is taken or acquired; (c) extent of title; (d) compensation: (1) in general; (2) amount; (3) how paid; (e) remedy: (1) in general; (2) procedure; (f) other matters; (III.) location; (IV.) use of: (a) as highway; (b) other uses: (1) in general; (2) for water power: (*a*) right to use; (*b*) grant of right; (V.) injury by construction and use; (VI.) duty to patrons; (VII.) adjuncts to canal; (VIII.) rights of own-

Among the New Decisions.

Appeal.

A writ of error from the supreme court of Florida to review a judgment rendered by an individual justice thereof in a habeas corpus proceeding is held, in *Ex parte* Cox (Fla.) 61 L. R. A. 734, not to lie.

Bills and Notes.

See NOTICE.

Carriers.

A railroad company which refuses to receive fruit for transportation because it is not in a properly iced refrigerator car is held, in Mathis *v.* Southern R. Co. (S. C.) 61 L. R. A. 824, not to be able to relieve itself from liability for the breach of its duty to transport the fruit on the ground that it did not hold itself out to the public as furnishing such cars for that purpose.

Commerce.

Taxes exacted from a sleeping-car company engaged in both interstate and intrastate traffic, under a state statute imposing an annual tax of $500 per car upon sleeping-car companies doing business in the state, which makes no distinction between cars used in interstate traffic or in traffic wholly within the borders of the state, are held, in Allen *v.* Pullman's Palace Car Co., Advance Sheets U. S. p. 39, to be void, as an attempt by the state to impose a burden upon interstate commerce.

Conflict of Laws.

The law of the place where the land is located, respecting the privy examination of a married woman, and not that of her residence, is held, in Smith *v.* Ingram (N. C.) 61 L. R. A. 878, to govern in determining the validity of her deed of real estate.

Constitutional Law.

Freedom to contract and the equal protection of the laws are held, in Atkin *v.* Kansas, Advance Sheets U. S. p. 124, not to be denied by Kan. Gen. Stat. 1901, §§ 3827–3829, making it a criminal offense for a contractor for public work to permit or require an employee to perform labor upon the work in excess of eight hours each day.

Convicts.

The right to work convicts in private chain gangs controlled by private individuals is denied, in Simmons *v.* Georgia Iron & C. Co. (Ga.) 61 L. R. A. 739, and a convict confined on such a chain gang is held to be entitled to be released from the custody of the individuals controlling it, and remanded to the custody of the authorities lawfully entitled thereto.

Corporations.

A director of a corporation who has transferred mortgaged property to it upon its agreement to assume and pay the mortgage is held, in Franklin Savings Bank *v.* Cochrane (Mass.) 61 L. R. A. 760, not to consent to a negotiation by the treasurer of an extension of the time of payment so as not to be discharged thereby, by permitting the treasurer to act on behalf of the corporation in the management of its fiscal affairs.

The relation of officers and directors of a corporation to it and its stockholders is held, in Boyd *v.* Mutual Fire Association (Wis.) 61 L. R. A. 918, not to be such as to prevent their taking the benefit of the statute of limitations in an action to hold them liable for misfeasance or malfeasance in office.

Covenants.

An assignee is held, in Wiggins *v.* Pender (N. C.) 61 L. R. A. 772, not to be deprived of the benefit of a covenant of warranty in a conveyance of real estate by the fact that he is not named in the covenant, if assigns are named in the habendum clause of the deed.

Drains and Sewers.

See MUNICIPAL CORPORATIONS.

Eight-Hour Law.

See CONSTITUTIONAL LAW.

Forgery.

The uttering as true of a forged mortgage and a forged note, which the mortgage purports to secure, at one time and to the same party, is held, in State *v.* Moore (Minn.) 61 L. R. A. 819, to constitute but one offense, so that a conviction on an indictment for uttering the mortgage is a bar to a subsequent conviction for uttering the note.

Habeas Corpus.

See APPEAL.

Highways.

Temporary occupation of a highway with rails, by a railroad company, for its convenience while elevating its roadbed to abolish a grade crossing over a highway, is held, in McKeon *v.* New York, N. H. & H. R. Co. (Conn.) 61 L. R. A. 730, to entitle the abutting owner, whose access to and from his property is thereby destroyed, to compensation.

Homestead.

See INJUNCTION.

Husband and Wife.

The right of a woman to enter into a partnership agreement with her husband, under statutory authority to acquire, own, and dispose of property to the same extent as her husband may do, and to make contracts and incur liabilities to the same extent as if un-

married, is sustained, in Hoaglin v. Henderson (Iowa) 61 L. R. A. 756.

The right to prosecute a man for criminal trespass in entering upon his wife's land with intent to make his residence there is denied, in State v. Jones (N. C.) 61 L. R. A. 777, although she has left him and removed from the premises upon good grounds for believing that he has been guilty of adultery, and has forbidden him again to enter upon them, and the Constitution provides that her property shall be and remain her sole and separate estate.

A provision for alimony in a judgment granting a divorce, which cannot be changed under existing laws, is held, in Livingston v. Livingston (N. Y.) 61 L. R. A. 800, to be a vested right which cannot be impaired by a subsequent statute conferring power upon the courts to modify it.

Infants.

See NEGLIGENCE.

Injunction.

Although a receiver has been illegally appointed by a state court in excess of its jurisdiction to aid the enforcement of its own judgment, it is held, in Phelps v. Mutual Reserve Fund Life Asso. (C. C. A. 6th C.) 61 L. R. A. 717, that he cannot be enjoined from acting by a United States circuit court, being protected by U. S. Rev. Stat. § 720, forbidding an injunction by any Federal court to stay proceedings in any state court, except when authorized by any law relating to proceedings in bankruptcy.

The matter in dispute in an injunction suit brought to restrain the seizure of a homestead on execution is held, in Speyrer v. Miller (La.) 61 L. R. A. 781, to be the homestead, and not the amount of the judgment sought to be executed.

Insurance.

Surrender of the right to extended insurance for the term earned by the premiums paid is held, in Drury v. New York Life Ins. Co. (Ky.) 61 L. R. A. 714, not to be effected by failure to pay a premium note, a clause in which provides that such failure shall work a forfeiture of the policy "except as to the right to a surrender value . . . which may be provided in the policy," where the policy provides, under the heading of surrender values, for either a paid-up policy or extended insurance, and states that, in case of a failure to demand a paid-up policy within a certain time, the policy shall be extended without request for the time specified in the schedule annexed.

The requirement in a policy of insurance against loss by the accidental discharge of an automatic fire extinguishing apparatus, that assured must use all reasonable means to save and preserve the property insured, is held, in Wertheimer-Swarts Shoe Co. v. United States Casualty Co. (Mo.) 61 L. R. A. 766, to refer to care to be taken after an accidental discharge of the apparatus, and not care to prevent an accident.

Failure to effect a change of beneficiary in a mutual benefit certificate, because of refusal of the one in whose favor it was issued to surrender the old one, is held, in Lahey v. Lahey (N. Y.) 61 L. R. A. 791, not to give the original beneficiary any right to the proceeds as against the claim of the one in whose favor the new certificate was to be issued, where by statute and the rules of the society there is an absolute right to make the change, and everything required by the rules is done except the surrender of the old certificate.

Judgment.

The defense of the statute of limitations is held, in Wheeler v. Castor (N. D.) 61 L. R. A. 746, to be a meritorious one which will justify the opening of the judgment taken by excusable default in order to let in such defense.

Landlord and Tenant.

The owner of a structure to be used as a toboggan slide at a bathing resort is held, in Barrett v. Lake Ontario Beach Improv. Co. (N. Y.) 61 L. R. A. 829, to be liable for resulting injuries in case a person attempting to use it falls from it by reason of insufficiency of the railing, although it is in possession of a tenant.

A tenant of land, not merely of a room or apartment, is held, in Arbenz v. Exley, Wat-

kins & Co. (W. Va.) 61 L. R. A. 957, to be liable to pay rent for his term, though a building on it, included in the lease, is totally destroyed by fire without fault on his part, unless the lease otherwise provides.

Libel.

That defamatory matter in a pleading refers to a stranger to the record is held, in Crockett *v.* McLanahan (Tenn.) 61 L. R. A. 914, not to deprive it of its absolute privilege, if it is pertinent and relative to the issue.

Limitation of Actions.

See CORPORATIONS; JUDGMENT.

Master and Servant.

See NEGLIGENCE.

Mortgage.

See CORPORATIONS.

Municipal Corporations.

See also WATERS.

A municipal corporation is held, in Georgetown *v.* Com. (Ky.) 61 L. R. A. 673, not to be subject to indictment for failure to compel the abatement of a nuisance to which it has not contributed, consisting of the emptying of filth into an open drain on private property within its limits.

An ordinance providing for the punishment of persons loitering about the streets and barrooms in idleness, without habitation or visible means of support, is held, in *Re* Stegenga (Mich.) 61 L. R. A. 763, to be within the power of a municipal corporation.

Negligence.

Violation of a statute forbidding the employment in factories of children of a certain age is held, in Marino *v.* Lehmaier (N. Y.) 61 L. R. A. 811, to be evidence of negligence which will support a civil action for injuries resulting therefrom, although it is punishable under the statute as a misdemeanor.

Notice.

Notice of protest of a bill of exchange, to a drawer who has executed an assignment for benefit of creditors, is held, in Taylor *v.* Citizens' Savings Bank (Ky.) 61 L. R. A. 900, to be sufficient to bind his estate in the hands of the assignee.

A message containing a notice of the sanction of a writ of certiorari, and of the time and place of hearing, signed by the plaintiff in certiorari, or by another as his attorney, and sent by telegraph and properly delivered in writing, is held, in Western U. Teleg. Co. *v.* Bailey (Ga.) 61 L. R. A. 933, to be a sufficient notice.

Partnership.

See HUSBAND AND WIFE; TRADE NAME.

Pleading.

See LIBEL.

Principal and Surety.

See CORPORATIONS.

Railroads.

See HIGHWAYS.

Rape.

Procuring a woman's consent to sexual intercourse by means of a sham marriage is held, in Lee *v.* State (Tex. Crim. App.) 61 L. R. A. 904, to constitute rape, under statutes defining rape as carnal knowledge of a woman without her consent, obtained by force or fraud.

Receivers.

See INJUNCTION.

Taxes.

The right of a state to tax credits arising out of loans on collateral security, made by the local agent of a foreign corporation, who retains the collateral, and, as evidence of the indebtedness, takes the customer's so-called check, which is regarded as an overdraft, upon which the customer is charged interest, and which is finally sent to the home office, to which the money, when repaid, is remitted by an exchange transaction, unless reloaned by the local agent to other parties, is sustained in State Board of Assessors *v.* Comptoir National D'Escompte, Advance Sheets U. S. p. 109.

Telegraphs.

See NOTICE.

Torts.

A settlement with part of several joint tort feasors which expressly reserves the right to pursue the others is held, in Gilbert *v.* Finch (N. Y.) 61 L. R. A. 807, not to be technically a release which will discharge the other tort feasors from liability.

Trade Name.

As between a surviving partner and the executor of the deceased one, the firm name is held, in Slater *v.* Slater (N. Y.) 61 L. R. A. 796, to be an asset of the partnership which the executor has a right to have sold for the settlement of the partnership affairs.

Trespass.

See HUSBAND AND WIFE.

Waters.

Injuries caused by the widening of the canal are held, in Mullen *v.* Lake Drummond Canal & W. Co. (N. C.) 61 L. R. A. 833, not to be included in the original condemnation of the right of way for the canal so as to prevent the subsequent recovery of damages for them.

A provision in a charter of a water company that the municipality shall have power by ordinance to regulate the price of water is held, in Knoxville *v.* Knoxville Water Co. (Tenn.) 61 L. R. A. 888, to give the municipality the continuing right to regulate the charges, limited only by a condition that such rates shall not be unreasonable or oppressive.

The title to lands under tide waters is held, in Shepard's Point Land Co. *v.* Atlantic Hotel (N. C.) 61 L. R. A. 937, to be vested in the respective states, and to be subject to grant by them to individuals.

Wharves.

The mere fact that a vessel owner has to go through mud to reach a berth in a dock is held, in Garfield & P. Coal Co. *v.* Rockland-Rockport Lime Co. (Mass.) 61 L. R. A. 946, not to cast upon him the risk of injury from a ledge of rocks of which he has no notice and of which the owner of the dock knows, or by the exercise of reasonable care could know.

New Books.

"Commentaries on the Law of Master and Servant." By C. B. Labatt. In Three Volumes. Vols. 1 and 2 Ready. (L. C. P. Co.) $6 per volume Delivered.

This is a masterly work. It analyzes the vast mass of the law on this subject with extraordinary thoroughness and ability. It includes not only all decisions on the subject in the United States, but also those of England, Scotland, Ireland, the Canadian Provinces, Australia, and New Zealand. Nothing so complete or thorough on this subject has ever before been done.

"Laws of New York on Banks, Banking, Trust Companies, etc." Containing also the Corporation Laws, Negotiable Instrument Law, and Tax Law Affecting Corporations. Also the National Bank Act and Cognate United States Statutes. By Willis S. Paine. Fifth Edition. (L. C. P. Co.) 1 Vol. $5 Delivered.

These statutes are annotated elaborately by the author, who was formerly superintendent of banking in the state of New York. The work has already been widely

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"Homophonic Conversations in English, German, French, and Italian." By C. B. & C. V. Waite.

This little book is a natural aid to the memory in learning the languages named. It is published at Chicago by C. V. Waite & Co., 479 Jackson Boulevard. The plan is to give the commonly used phrases and words in parallel columns, showing the equivalent in the four languages.

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Recent Articles in Law Journals and Reviews.

"Non-Suits, Old and New."—65 Albany Law Journal, 363.

"Pensioning School Teachers."—57 Central Law Journal, 481.

"Can a Married Woman—a Woman under Coverture—Acquire the Title to Land by Disseisin and Adverse Possession—by Disseisin and the Running of the Statute of Limitations?"—57 Central Law Journal, 485.

"Slot Machines as Lotteries."—57 Central Law Journal, 488.

"The Alien Immigrant.—I."—116 Law Times, 101, 125.

"The Motor Car Act and Regulations."—67 Justice of the Peace, 589.

"The Liability of Lessees for Sanitary Works."—67 Justice of the Peace, 590.

"New Trials for Erroneous Rulings upon Evidence."—3 Columbia Law Review, 433.

"The Tubwomen *v.* The Brewers of London (Conspiracy to Raise Wages)."—3 Columbia Law Review, 447.

"The Steel Corporation Cases."—3 Columbia Law Review, 470.

"Ratification in the Law of Agency."—57 Central Law Journal, 463.

"Right of Either Party to an Action at Law to Poll the Jury."—57 Central Law Journal, 469.

"The Northern Securities Company Case; A Reply to Professor Langdell."—13 Yale Law Journal, 57.

"The Equitable Liability of Stockholders; the Grounds upon Which it Rests."—13 Yale Law Journal, 66.

"Legal Aspects of the Panama Situation."—13 Yale Law Journal, 85.

"Notes on Consideration."—17 Harvard Law Review, 71.

"The Power of Congress over Combinations Affecting Interstate Commerce."—17 Harvard Law Review, 83.

"Death of the Drawer of a Check."—17 Harvard Law Review, 104.

"Discovery and Production—Some Con-

trasts between the Law in England and Ontario."—39 Canada Law Journal, 762.

"The Right of Privacy."—36 Chicago Legal News, 126.

"What Constitutes a 'Condition of Peonage' Repugnant to the Federal Constitution and Statutes Passed in Pursuance Thereof?"—57 Central Law Journal, 441.

"Statutory Restraints on the Marriage of Divorced Persons."—57 Central Law Journal, 444.

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"The Employment of Children Act, 1903."—67 Justice of the Peace, 542, 566.

"The Negotiable Instruments Law—A Course of Study."—20 Banking Law Journal, 711.

"Incorporated Dishonesty."—36 Chicago Legal News, 115.

"Federal Incorporation for Companies Engaged in Interstate Commerce."—27 National Corporation Reporter, 377.

"The Law of Reason."—2 Michigan Law Review, 159.

"Foreign Voluntary Assignments for the Benefit of Creditors—Part II."—2 Michigan Law Review, 180.

"The Administrative Powers of the President—Part I."—2 Michigan Law Review, 190.

"The Legal Position of the 'Motor-Car.'"—11 Weekly Notes, 65.

"The Judicial Salaries Law in Pennsylvania."—42 American Law Register N. S. 653.

"Whether the Giving of Trading Stamps is Subject to Prohibitory Legislation."—57 Central Law Journal, 421.

"The Power of the State Board of Health, under the Missouri Constitution, to Revoke a Physician's License."—57 Central Law Journal, 423.

"Ownership in Animals Feræ Naturæ."—57 Central Law Journal, 425.

"Subsequent Birth of Children as a Revocation of a Will."—9 Virginia Law Register, 473, 579.

"The Modification of the Supply-Lien Act as against Mining and Manufacturing Companies."—9 Virginia Law Register, 685.

The Humorous Side.

WHY LAWYERS MULTIPLY.—An attorney sends us a clipping containing the following, which is said to have been written by Richard Peters, the first reporter of the United States Supreme Court, and preserved by John Adams in his diary. It was handed by Peters to Judge Willing in Philadelphia one day in court while the convention of 1774 was in session, in reply to a question which the judge had asked in pleasantry at dinner.

"You ask me why lawyers so much are increased,
Though most of the people already are fleeced;
The reason, I'm sure, is most strikingly plain—
Tho' sheep are oft sheared the wool grows again.
And though you may think e'er so odd of the matter,
The oftener they're fleeced the wool grows the better:
Thus down-chin'd boys, as oft I have heard,
By frequently shaving obtain a long beard."

IT WOULD TAKE TIME.—"You want me to tell the whole truth?" asked the witness. "Certainly," replied the judge. "The whole truth about the plaintiff?" "Of course." "How long does this court expect to sit?" "What difference does that make?" "It makes a lot of difference. I couldn't tell the whole truth about that scoundrel inside of thirty days." (Chicago Post)

HOW THEY DO IT IN ENGLAND.—The simple, lucid style in which a learned lawyer may question a witness is illustrated by the following verbatim fragment from the English law courts as reported by the St. James Gazette: King's counsel (examining witness)—"Did you—I know you did not, but I am bound to put it to you—on the 25th—it was not the 25th really, it was the 24th—it is a mistake in my brief—see the defendant—he is not the defendant really; he is the plaintiff—there is a counterclaim, but you would not understand that—yes or no?" Witness. "What!"